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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,988	12/22/2003	Joshua M. Kopelman	2043.047US2	9050
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SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER SHEIKH, ASFAND M	
			ART UNIT 3627	PAPER NUMBER
			NOTIFICATION DATE 01/07/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/743,988	Applicant(s) KOPELMAN ET AL.	
	Examiner Asfand Sheikh	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/21/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10/21/2010 have been fully considered but they are not persuasive.

The examiner would like to note that the rejection has been modified from the previous action to include Woolston in the independent claims due to the newly presented amendments.

The examiner notes the applicant argues the feature of "unspecified price".

The examiner would like to note that Woolston discloses selling the good in a marketplace as an item for sale at an unidentified/unspecified price (see at least, abstract). The examiner notes an auction would be considered to be an unspecified price under a reasonable interpretation. Further Reuhl was taught to disclose establishing with a pricing agent stored in the memory of the marketer controller a sale price at which the good may be purchased by a buyer from the independent seller (see at least, col. 4, lines 7-19), the sale price derived, independent of a sale price suggested by the seller, by a predetermined method using as input the received vendor's price for the comparable good (see at least, col. 4, lines 7-19). Therefore the examiner notes the teachings of Woolston and Reuhl can be modified to in such a manner at they would be combinable to Nahan and further read on the applicant's claim. The examiner notes as interpreted Reuhl would read on deriving a price independent of a sale price suggested by the seller and further Woolston notion of an "auction" which represents an unidentified/unspecified price of an item for sale derived by a broker (see at least,

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Woolston, col. 2, lines 27-38: the examiner notes a consignment node can be considered to be a marketer controller deriving a price of sale of a used good representing independent seller's agreement to sell the good at an unspecified fixed price). The examiner notes these notions can be combined to read on "the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketer controller as a function of another party's price for a comparable good." Therefore the examiner finds the arguments not persuasive...

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nahan et al. (US 5,664,111) in view of Stack (US 6,076,070) and Reuhl et al. (US 5,873,069) and Woolston (US 6,202,051 B1).

Claim 1-27

[claims 1, 16, 18] Nahan discloses a method for pricing goods offered for sale by independent sellers, the method being computer implemented by a marketer controller capable of communicating via a communications network, the marketer controller including a CPU and a memory operatively connected to the CPU, the method

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comprising the marketer controller (see at least, abstract and col. 13, lines 13-28): receiving data from an independent seller, via the communications network, the data identifying a good offered for sale by the independent seller and representing the independent seller's agreement to sell the good at a fixed price to be determined by the marketer controller as a function of another party's price for a comparable good, in accordance with a predetermined method (see at least, col. 2, lines 38-59 and col. 13, lines 38-49: the examiner notes the listing data becomes permanent) and with respect to **[claim 18]** a condition of a product (see at least, col. 3, lines 44-48) and **[claim 26 and 27]** wherein the predetermined pricing method to be used is set by the marketer controller/independent seller (see col. 13, lines 13-28).

Nahan fails to disclose querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good, said querying comprising the marketer controller transmitting a query, via the communications network, to a vendor's controller that is configured for electronic communication via the communication network and that includes a respective CPU and respective memory operatively connected to the respective CPU, said query identifying said good and requesting transmission to the marketer controller of the vendor's price for the comparable good (e.g. another parties price based on a predetermined method); receiving, via the communications network the vendors price for the comparable good; and establishing with a pricing agent stored in the memory of the marketer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived, independent of a sale price suggested by the seller, by a

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predetermined method using as input the received vendor's price for the comparable good

Stack discloses querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good, said querying comprising the transmitting a query, via the communications network, to a vendor's controller that is configured for electronic communication via the communication network and that includes a respective CPU and respective memory operatively connected to the respective CPU, said query identifying said good and requesting transmission of the vendor's price for the comparable good (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33); receiving, via the communications network the vendors price for the comparable good (see at least, col. 3, lines 57-61); and establishing with a pricing agent stored in the memory of the marketer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived by a predetermined method using as input the received vendor's price for the comparable good (see at least, col. 3, lines 45-col. 4, line 15).

Further Stack discloses **[claims 3 and 19]** wherein the seller agrees, before the sale, to sell the good at a sale price determined by the marketer proximate a time of sale of the good to the buyer, the sale price being determined in accordance with the predetermined method (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33) and **[claim 4]** wherein using a predetermined method to derive the sale price comprises equating an index price to the vendor's price of the comparable good (see at least, col. 3, lines 40-43: the examiner notes if the "competitor's price is lower" to

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be a an index price) and **[claims 5, 8, and 9]** wherein the seller's good is used and has a certain universal product code (UPC) or International Standard Book Number (ISBN) code, and the comparable good is new and has an identical UPC or ISBN (see at least, col. 4, lines 35-39) and **[claim 6]** wherein the querying is performed responsive to the receiving of the identifying data (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33) and **[claims 7 and 17]** wherein the predetermined method for deriving the sale price of the independent seller's good is set by the marketer controller (see at least, col. 2, lines 34-50 and col. 3, line 45-53 and col. 4, lines 31-33) and **[claims 10 and 11 and 25]** wherein the predetermined method comprises discounting the index price for the comparable good to determine the sale price for the independent seller's good (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33) and further with respect to [claim 11] the examiner notes that discounting based on the index price is a matter of design choice and can be set by any parameter used for calculating a discount (e.g. 10% the difference of the competitor price based on a price match) and **[claim 12]** wherein the querying is performed responsive to receiving from a buyer, via the communications network, an expression of interest in purchasing the good (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33and col. 4, lines 35-39) and **[claims 13-15 and 22-23]** wherein the expression of interest is a standard identification code identifying the good and wherein the standard identification code comprises a universal product code (UPC) or International Standard Book Number (ISBN) (see at least, col. 2, lines 34-60 and col. 3, line 45-53 and col. 4, lines 31-33and col. 4, lines 35-39)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahan to include querying a vendor's controller, via the communications network, to determine the vendor's price for a comparable good; and deriving a sale price for the good from the vendor's price using a predetermined method as taught by Stack. One of ordinary skill in the art would have been motivated to combine the teachings in order to assure a customer that they are getting the best price available for goods and/or services ordered through the network (see at least, Stack, col. 2, lines 27-31).

Nahan in view of Stack fail to disclose establishing with a pricing agent stored in the memory of the marketer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived, independent of a sale price suggested by the seller, by a predetermined method using as input the received vendor's price for the comparable good.

Reuhl discloses establishing with a pricing agent stored in the memory of the marketer controller a sale price at which the good may be purchased by a buyer from the independent seller (see at least, col. 4, lines 7-19), the sale price derived, independent of a sale price suggested by the seller, by a predetermined method using as input the received vendor's price for the comparable good (see at least, col. 4, lines 7-19) and further **[claim 16]** a comparison from a plurality of vendors (see at least, col. 4, lines 7-19).

Further Reuhl discloses **[Claim 20]** wherein the querying is performed proximate a time that the independent seller registers the good with the marketer as a good

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offered for sale by the seller (see at least, col. 3, lines 40-57: the examiner notes when an item would be added it would be compared to the market and priced accordingly).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahanin view of Stack to include establishing with a pricing agent stored in the memory of the marketer controller a sale price at which the good may be purchased by a buyer from the independent seller, the sale price derived, independent of a sale price suggested by the seller, by a predetermined method using as input the received vendor's price for the comparable good as taught by Stack. One of ordinary skill in the art would have been motivated to combine the teachings in order to provide automatic and frequent prices and reprices of a plurality of products in inventory, responsive to competitive market price changes and also provides point of sale assistance to buyers with price comparison among competitors on the product of interest or a substantially similar competitor product (see at least, col. 2, lines 61-col. 3, line 2).

Nahan in view of Stack and Reuhl disclose the claimed invention as noted above with respect to claim 1, however fails to disclose presenting the good in a marketplace as an item for sale at an unidentified/unspecified price, the marketplace being accessible to a buyer via the communications network and presenting the good for sale in the marketplace at the sale price (e.g apart from any price for the good) and adding the good to a list of goods registered for sale, the good being listed for sale at an unspecified price.

Woolston discloses presenting the good in a marketplace as an item for sale at an unidentified/unspecified price, the marketplace being accessible to a buyer via the communications network and presenting the good for sale in the marketplace at the sale price (e.g apart from any price for the good) and adding the good to a list of goods registered for sale, the good being listed for sale at an unspecified price (see at least, abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Nahan in view of Stack and Reuhl to include presenting the good in a marketplace as an item for sale at an unidentified price, the marketplace being accessible to a buyer via the communications network and presenting the good for sale in the marketplace at the sale price (e.g apart from any price for the good) and adding the good to a list of goods registered for sale, the good being listed for sale at an unspecified price as taught by Woolston. One of ordinary skill in the art would have been motivated to combine the teachings in order to allow users to speculate on the price of collectable or used goods in an electronic market place (see at least, Woolston, col. 2, lines 3-8).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand Sheikh whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Asfand Sheikh/
Examiner, Art Unit 3627

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627